

Public comments on the 2012 Staff Report

This document presents comments provided by stakeholders during the public comment periods for the Amendment for the Water Quality Control Plan for the North Coast Region to Update Water Quality Objectives. The initial public comment period for this amendment began upon public release of the Staff Report and Basin Plan amendment language on February 3, 2012 and ended 55 days later on March 29, 2012.

No.	Commenter Name	Organization	Date
1	Ms. Terrie Mitchell, Chair (TRI TAC) Ms. Roberta Larson, Director, Legal Affairs (CASA)	Tri-TAC, Terri Mitchell & CASA, Roberta Larson (jointly)	March 29, 2012
2	Mr. Miles Ferris, Director of Utilities	City of Santa Rosa	March 29, 2012
3	Mr. Randal J. Mendosa, City Manager	City of Arcata	March 29, 2012
4	Ms. Michelle D. Smith, Staff Attorney	Humboldt Baykeeper	March 12, 2012



March 12, 2012

via email and U.S. Mail

North Coast Regional Water Quality Control Board
Attn: Lauren Clyde
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Santa Rosa, CA 95403
LClyde@waterboards.ca.gov

Re: Proposed Amendment to the Water Quality Control Plan for the North Coast
Region to Update Water Quality Objectives

Ms. Clyde:

On behalf of the Board and staff of Humboldt Baykeeper, the following comments are submitted regarding the Proposed Amendment to the Water Quality Control Plan for the North Coast Region to Update Water Quality Objectives ("Proposed Amendment"). Humboldt Baykeeper is located on the North Coast of California and works to safeguard our coastal resources for the health, enjoyment, and economic strength of the Humboldt Bay community through education, scientific research, and enforcement of laws to fight pollution. Humboldt Baykeeper thanks the staff of the North Coast Regional Water Quality Control Board ("Regional Board") for the time and attention they are devoting to updating and clarifying the Water Quality Control Plan for the North Coast Region ("Basin Plan"). We look forward to Phase II of this process and the update of requirements regarding the discharge of waste to land.

Regarding the general readability of the Proposed Amendment, Humboldt Baykeeper believes that Regional Board Staff has done well in clarifying the language in the Basin Plan and in clarifying that the requirements of the Basin Plan apply to all waters within the Region, not simply those with the specific designated beneficial uses. We do believe, however, that greater clarity can be developed regarding language related to the municipal and domestic supply beneficial uses. Language in Sections 3.5 and 3.6 of the Basin Plan has been added stating that "At a minimum, waters with the municipal and domestic supply (MUN) beneficial use shall comply with the minimum chemical constituents levels for municipal and domestic supplies objective." See e.g. Proposed

Amendment at Appendix A, Basin Plan Sections 3.5.3, 3.5.8, 3.5.10, 3.6.2, 3.6.3. This language appears to preclude the requirement that these water quality objectives apply to waters with beneficial uses *other than* municipal and domestic supply. We do not believe that is staff's intent and the language should be modified

Groundwater

Humboldt Baykeeper would first like to recommend that the Basin Plan needs to have additional language included clarifying the hydrological connection between surface and groundwater. An additional beneficial use should be included for each media recognizing this connection. In most, if not all, circumstances any negative impact to either surface water or groundwater will have impacts to the beneficial uses of the other. The inclusion of this beneficial use would have positive impacts on the regional Board's ability to properly and adequately regulate our water resources. This is recognized by Regional Board staff on page 7-4 of the Staff Report to the Proposed Amendment where they state "In addition to protecting the beneficial uses of groundwaters identified in the Basin Plan, protection of groundwater resources is also an important component in the protection of a number of beneficial uses associated with surface waters, such as providing cold water habitat (COLD) from inflow of cold groundwater to streams during warm summer conditions." Staff Report to Proposed Amendment at 7-4. This connection needs to be recognized as a stand-alone beneficial use of our state waters.

Humboldt Baykeeper would additionally like to commend the Regional Board for including a Toxicity Objective for application to groundwater. The potential negative impacts that can arise due to the contamination of our groundwaters by toxic substances is important for both human and environmental health, especially when considered in conjunction with the hydrological connection between surface and groundwater. We appreciate that the Regional Board is recognizing this impact and including it within the Basin Plan.

Toxicity Objective

Humboldt Baykeeper would like to commend Regional Board staff for including language within the Proposed Update that recognizes that the toxicity objective can be violated due to the combined effects of multiple substances within the water column. Staff Report at 3-11. This recognition is a positive first step to recognizing the cumulative impacts of toxic substances in the environment. We believe that the Toxicity Objective needs to be further modified to recognize the biomagnification and bioaccumulative effects of toxic substances within the environment as well. As currently

written, the Toxicity Objective ignores these impacts and only focuses on acute effects of toxics in the environment. This needs to be changed.

Policy for the Application of Narrative Water Quality Objectives

Humboldt Baykeeper is pleased that the Regional Board has developed a policy for the application of narrative water quality objectives and has included an explanation of the methods by which narrative water quality objectives are applied to permits, orders, and other regulatory actions. Clarity in application is useful for both the public and for regulated entities in understanding the standards that will be applied for the protection of water resources. While we support the inclusion of the Policy within the Basin Plan, we also believe that the "General Procedures for Calculating Numeric Effluent Limits, Step 5" needs to be modified so that the most protective numeric limit is the limit chosen for application under the narrative objectives, using a less protective "most appropriate" limit introduces unnecessary uncertainty into a process that was developed to do the very opposite. *See* Staff Report at Appendix B, page B-3.

Conclusion

Humboldt Baykeeper would again like to thank the North Coast Regional Water Quality Control Board and its staff for the time and effort that went in to developing this Proposed Amendment. We appreciate the opportunity to provide the above comments and hope they will be incorporated into the final Basin Plan adopted by the North Coast Regional Water Quality Control Board. We additionally look forward to participating in Phase II's process related to the discharge of waste to land.

Thank you for your time,

_____/s/_____
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March 29, 2012

Via Electronic Mail

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Proposed Amendments to the *Water Quality Control Plan for the North Coast Region* to Update Water Quality Objectives

Dear Ms. Clyde:

The City of Santa Rosa (hereafter "Santa Rosa") appreciates the opportunity to comment on the proposed Basin Plan Amendments to update Water Quality Objectives. This letter summarizes the City's comments with regard to the Regional Board staff's proposal for amendments to the Basin Plan. Santa Rosa has two main concerns with the proposed amendments as follows:

1. The exclusion of a mixing zone policy for human health related constituents; and
2. These proposed amendments may not be compliant with state and/or federal law requirements

These concerns are discussed in detail below.

1. Exclusion of a Mixing Zone Policy for Human Health Related Constituents.

Chapter 4 of the Basin Plan (Implementation Plans) presents actions intended to meet water quality objectives and protect beneficial uses of the Klamath River Basin and North Coastal Basin. The proposed Basin Plan Amendment contains several revisions to Chapter 4 but does not include mixing zone policy for human health related constituents.

The 2007-2010 Triennial Review Priority List included the development of a "Mixing Zone Policy" (Rank 12 of 29 issues) which would be focused only on pollutant limits intended to protect municipal supply (nitrates, chlorine break-down products, etc). A report was prepared that provided background information needed by Regional Water Board staff to pursue this proposed Basin Plan amendment. This report, submitted to the Regional Board in January 2011, provided a description of the existing regulations and policies, Basin Plan Amendment alternatives, and an environmental analysis.

This issue is of critical importance to dischargers in the North Coast Region because complying with water quality objectives and drinking water standards, and effluent limitations based on these objectives and standards may be costly or infeasible for some dischargers. Mixing zones are recognized in the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP) for constituents with California Toxics Rule (CTR). However, no provision is made either by the State or the Basin Plan for mixing zones for non-CTR constituents. Because this issue is such importance to dischargers and much of the necessary information for a Mixing Zone Basin Plan Amendment has been provided to the Regional Board, Santa Rosa urges the Regional Board to include a Mixing Zone Policy for Human Health Related Constituents in the proposed Basin Plan Amendment.

2. Compliance of the Proposed Amendments with State and/or Federal Law Requirements

A. California Environmental Quality Act ("CEQA") Compliance

The proposed amendments fail to comply with CEQA, including defining the appropriate baseline for the analysis, defining the project,¹ and considering alternatives, including the "no project" alternative.² (See proposed amendments at pp 5-1 – 5-5, 5-7 – 5-42; see also CEQA Guidelines §15126.6(e).) The environmental checklist's determination of "[n]o significant or potentially significant adverse impacts" and of no impact beyond baseline is not supported, given that the proposed amendments, including new or modified water quality objectives, will undoubtedly result in new or modified permit requirements that demand "on the ground" facility or operational modifications. (See *Staff Report* at 5-4.) Such a "conclusory statement 'unsupported by empirical or experimental data, scientific authorities, or explanation of any kind' not only fails to crystallize issues but 'affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.'" (*Whitman v. Bd. of Supervisors* (1979) 88 Cal. App. 3d 397, 411 (citations omitted).) In addition, none of the possible impacts were explored because the CEQA analysis was premised on an erroneous assumption that "the proposed WQO Update Amendment will not cause any change to the existing regulatory programs." (*Id.*; see also *Staff Report* at 1-2.)

The CEQA analysis must be revised to more accurately define the project, explore alternatives, and to contemplate the likelihood of facility or operational modifications resulting from implementation of the proposed amendments in the form of new permit requirements (e.g., those derived from the proposed narrative translator) or Total Maximum Daily Load ("TMDL") provisions if ambient water quality, as evaluated by the proposed new water quality objectives, is not attained in various receiving waters. Facility or operational modifications may have air, noise, visual, and/or water quality-related impacts. These must be explored before the proposed amendments are finalized.

¹ The "project" must include not just the Regional Board's proposed amendments, but also the physical improvements that any affected dischargers will need to make to comply. Further, the project's environmental effects have not been analyzed "in connection with... the effects of probable future projects." (CEQA Guidelines § 15065(a)(3)) The Regional Board has failed to analyze or even identify other present and/or future projects with which the Basin Plan amendments could have cumulative impacts.

² An environmental analysis will be found legally inadequate if it contains an overly narrow range of alternatives. (See, e.g., *Watsonville Pilots Ass'n v. City of Watsonville* (2010) 183 Cal. App. 4th 1059, 1087.)

B. MCLs May Not be Directly Incorporated into the Chemical Constituents Objective Without the Required Independent Analysis.

The proposed Basin Plan amendment states that it includes a new water quality objective in what is being called the “general chemical constituents objective for municipal and domestic water supplies” or the “general chemical constituents objective” (hereinafter “Chemical Constituents Objective”) (*See Staff Report* at 3-2.) This characterization is flawed because this is not a new, single objective; it is instead the incorporation by reference of numerous primary and secondary maximum contaminant level (“MCL”) drinking water standards adopted by the California Department of Public Health (“DPH”), which were not developed or adopted as water quality objectives for ambient waters. Instead, these MCLs were designed to apply to treated, finished tap water served to the public for drinking.

DPH implements California’s Safe Drinking Water Act (Health & Saf. Code, §§116270 *et seq.*), which is intended to “ensure that the *water delivered by public water systems* of this state shall at all times be pure, wholesome, and potable.” (*Western States Petroleum Assn. v. State Dept. of Health Services* (2002) 99 Cal.App.4th 999, 1008-1011, emphasis added; Health & Saf. Code, §§116270(e), (g), 116275(c), (d).) To further this charge, DPH “adopt[s] primary drinking water standards for contaminants in drinking water.” (Health & Saf. Code, §116365(a).) Primary MCLs are developed for the purpose of protecting the public from possible health effects associated with long-term exposure to contaminants in drinking water. (*Id.* at §116275(c); *In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 686, citing *Substantive Water Quality Opinion*, 2000 P.U.C. LEXIS 711, at ** 25-26.) MCLs are not adopted by DPH to apply to all of California’s waters.

In contrast, the Legislature delegated to the Water Boards the regulation of “activities and factors which may affect the quality of the waters of the state” so as “to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.” (Wat. Code, §13000.) The regional boards must consider, among other things: environmental characteristics of the hydrographic unit under consideration, including the quality of the water available thereto; the reasonably achievable water quality conditions of the waterbodies at issue; and economic considerations. (*Id.* at §13241(b), (c), (d).) Unlike the Safe Drinking Water Act, Porter-Cologne’s statutory scheme is aimed at regulating ambient water quality in lakes or rivers or other channels, some fraction of which may or may not ultimately be diverted and treated for municipal use. When an MCL is the basis for an effluent limitation in a discharge permit, exceedance of the effluent limitation constitutes a violation of the Permit, triggering potential liability. (Wat. Code, §13385(a); 33 U.S.C. §1319.)

The convenience of adopting MCLs as WQOs without further analysis does not justify ignoring a legislative mandate. DPH does not and may not consider the cost of imposing drinking water standards on water *other than* water delivered through public water systems. The two agencies, by law, have different roles and responsibilities and, accordingly, adopt and apply different standards. Promulgation of water quality objectives (WQOs) lies exclusively with the State and

Regional Boards, which must independently comply with the applicable laws. (Wat. Code, §§13223(a), 13241, 13242.)

C. The Proposed Incorporation of MCLs into the Basin Plan Does Not Comply with Water Code Section 13241

The proposed Basin Plan amendment would directly incorporate MCLs that have never been subjected to the Water Code requirements for adoption as separate water quality objectives under Water Code section 13241. This is contrary to law. (Statement of Decision, *City of Tracy v. State Water Resources Control Board*, Sacramento County Case Number: 34-2009-80000392 (May 10, 2011) at p. 27 (“Water Code section 13241 imposes an affirmative obligation on the State, when establishing water quality objectives, to take into account various factors, including the economic costs of adopting the proposed objective.”)) Many of the MCLs proposed for incorporation into the Chemical Constituents Objective are different from those included in the previous Table 3-2 of the Basin Plan. In fact, the Staff Report states that “the majority of the values presented in Table 3-2 are no longer appropriate as they do not accurately reflect current Title 22 regulations.” (See *Staff Report* at 3-12 (emphasis added).) Further, the Staff Report delineates only a fraction of those changes, namely the removal of lead and the modification of the fluoride MCLs. (See *Staff Report* at 3-4.)

Numerous other MCLs would now be pulled into the Basin Plan that are not currently included in Table 3-2, including the following inorganic chemicals: antimony (0.006 mg/L), asbestos (7 MFL), beryllium (0.004 mg/L), cyanide (0.15 mg/L), nickel (0.1 mg/L), nitrate + nitrite (10 mg/L), nitrite (1 mg/L), perchlorate (0.006 mg/L), thallium (0.002 mg/L); and organic chemicals: 1,2-dichlorobenzene (0.6 mg/L), dichloromethane (0.005 mg/L), MTBE (0.013 mg/L), styrene (0.1 mg/L), toluene (0.15 mg/L), 1,2,4-trichlorobenzene (0.005 mg/L), alachlor (0.002 mg/L), benzo(a)pyrene (0.0002 mg/L), dalapon (0.2 mg/L), dibromochloropropane (0.0002 mg/L), di(2-ethylhexyl)adipate (0.4 mg/L), dinoseb (0.007 mg/L), diquat (0.02 mg/L), endothall (0.1 mg/L), hexachlorobenzene (0.001 mg/L), hexachlorocyclopentadiene (0.05 mg/L), oxamyl (0.05 mg/L), pentachlorophenol (0.001 mg/L), picloram (0.5 mg/L), PCBs (0.0005 mg/L), and 2,3,7,8-TCDD (Dioxin) (3×10^{-8} mg/L). These are substantial additions not even recognized in the Staff Report.

In addition, the new objective would incorporate all secondary MCLs in Title 22 Tables 64449-A and 64449-B, which are not currently incorporated into the Basin Plan, but are merely available for possible use. (See Basin Plan, Table 3-2, footnote 2 (referencing that secondary MCLs “that are more stringent may apply”).) This would add new numeric objectives for color (15 units), copper (1.0 mg/L), foaming agents (MBAS) (0.5 mg/L), iron (0.3 mg/L), manganese (0.05 mg/L), odor (3 Units), turbidity (5 Units), and zinc (5.0 mg/L), and would create more stringent objectives for aluminum (0.2 mg/L), MTBE (0.005 mg/L), silver (0.1 mg/L), and thiobencarb (0.001 mg/L).

The Staff Report identifies at least two of the objectives proposed, for chlorobenzene and endrin, as more stringent than the values presented in the current Table 3-2. (See *Staff Report* at 6-3.³)

³ The tables of MCLs in Title 22 do not contain an MCL for chlorobenzene and neither does Table 3-2. An MCL for 1,4-Dichlorobenzene is in both places and has not changed. In addition, the MCLs for Arsenic and Cadmium

Nevertheless, the Regional Board has presented no analysis of these changes and how they will impact water quality regulation, how they will be achieved, or what regulated discharges may need to do to comply with these changes. As noted, these MCLs have never been subjected to the Water Code requirements for adoption as separate water quality objectives under Water Code section 13241, and that must be done before they are incorporated into the Basin Plan.

The Regional Board must conduct its own independent analysis of the evidence relied on by other agencies before adopting another entity's criteria as its own. (*California Nursing Home Assn. v. Williams* (1970) 4 Cal.App.3d 800, 813-814 ("*Williams*").) In that case, a California court considered whether the Department of Health Care Service, in its regulations, could adopt standards developed by the Department of Finance for reimbursement rates for certain health care services, "without independent consideration of the underlying evidence and without public or judicial access to [that evidence]." (*Id.* at pp. 813-814.) The court held that to do so, "transgresses fundamental demands for the adoption of administrative regulations." (*Id.* at p. 814.) Further, the court held that the statute "*enjoins the Director of Health Care Services, no one else, to adopt regulations* establishing these rates. In the enactment of these regulations *he, no one else*, is to receive and consider the evidence which will permit compliance with the statutory standard" (*Id.* at p. 815, emphasis added.)

The Regional Board's obligation to conduct an independent analysis is critical since other entities are not required to consider the same statutorily mandated factors that the Regional Board must consider when adopting WQOs. As stated above, the Regional Board has failed to conduct any independent analysis of the DPH MCLs (i.e., drinking water standards applicable to tap water) before proposing to adopt such standards as WQOs for rivers, streams, other waterways and groundwaters throughout the North Coast. Thus, the Regional Board has failed to comply with applicable law in the proposed adoption of these "borrowed" standards. Porter-Cologne mandates the consideration and balancing of a number of factors, including economics and the reasonable attainability of WQOs in affected waters, which has not been done.

The Chief Counsel of the State Water Resources Control Board (SWRCB) has explained in detail the "affirmative duty" of the regional boards to apprise themselves of the cost and other potential consequences of any proposed WQO, and to engage in a "balancing" process in order to arrive at WQOs that are "reasonable":

A Regional Water Board is under an affirmative duty to consider economics when adopting water quality objectives in water quality control plans . . . To fulfill this duty, the Regional Water Board should assess the costs of the proposed adoption of a water quality objective.

If the potential economic impacts of the proposed adoption of a water quality objective appear to be significant, the Regional Water Board must articulate why adoption of the objective is necessary to assure the reasonable protection of beneficial uses of state waters, despite the potential adverse economic consequences.

have gotten more stringent, which was not identified in the Staff Report. (Compare Table 3-2 with Title 22, Table 64431-A.)

* * * *

... objectives must be reasonable and economic considerations are a necessary part of the determination of reasonableness. "The regional boards must balance environmental characteristics, past, present and future beneficial uses, and economic considerations (both the cost of providing treatment facilities and the economic value of development) in establishing plans to achieve the highest water quality which is reasonable." [citation omitted]

* * * *

The State or Regional Water Board's rationale for determining that adoption of a proposed objective is necessary to protect water quality, despite adverse economic consequences, must be discernible from the record. (SWRCB Chief Counsel Memorandum from William R. Attwater, to Regional Water Board Executive Officers, *Guidance on Consideration of Economics in the Adoption of Water Quality Objectives*, January 4, 1994.)

With respect to the WQOs at issue incorporated into the Chemical Constituents Objective, no evidence exists that the Regional Board has adequately complied with Water Code §13241 and §13242. In fact, without evidence, the Regional Board concludes that "there will be no additional costs incurred as a result of the adoption of the proposed WQO Update Amendment." (*See Staff Report* at 5-43.) The Regional Board simply proposes to incorporate the DPH MCLs, without any independent analysis of each of the factors required by Water Code §13241 for each of the proposed new MCLs being incorporated. The Regional Board did not make a reasonable attempt to determine the cost of compliance, balance public interest factors, or create an implementation plan for each MCL.

The Regional Board staff purports to have performed a section 13241 analysis for all changes set forth on pages 7-1 through 7-5 of the Staff Report. This "analysis" is clearly inadequate. First, the analysis admits "there is insufficient data to conclude if all groundwaters and surface waters are attaining the proposed objectives." (*See Staff Report* at 7-5.) Without these data, the Regional Board cannot adequately consider the "quality of water available" in the hydrographic units to which these objectives will apply, or the "water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area." (Cal. Water Code §13241(b) and (c).) The Regional Board also somehow concludes that "there will be no additional costs to dischargers or responsible parties to implement the proposed WQO Update Amendment" because the Regional Board erroneously assumes that "the proposed objectives will not change the way staff regulates discharges." (*See Staff Report* at 7-5.)

If new water quality objectives are adopted, dischargers will have to comply with those new objectives. A presumption that no new treatment technologies will be required to comply with these new objectives is not adequately supported by evidence in the record and does not comply with the Water Code. In addition, the Regional Board failed to create an implementation plan for any dischargers because of the inaccurate conclusions that "no additional actions would be necessary to achieve the new objectives as implementation of the existing chemical constituents objective and protection of drinking water supplies is already in place," and "no additional

actions beyond those already required as part of the current regulatory programs are needed to achieve compliance with the proposed water quality objectives.” (See *Staff Report* at 7-6.)

The Regional Board, if relying on MCLs from DPH, must also consider the Best Available Technologies (“BAT”) identified by that agency that have been stated would be necessary to treat drinking water to the MCL levels. These technologies include, but are not limited to, coagulation/filtration, granular activated carbon, ion exchange, reverse osmosis, electrodialysis, oxidation, and lime softening. (See e.g., Title 22 at Tables 64447.2A, 64447.3A, B and C.) Since similar technologies would be needed for wastewater or stormwater to achieve these same MCL levels, the costs of these treatment technologies must be included in any proper section 13241 analysis.

D. Unlawful Incorporation by Reference of New MCLs in the Future

In an attempt to limit the work required to maintain a table of applicable objectives, the proposed amendment seeks to incorporate the changes to the MCLs *automatically and prospectively*. (*Id.*) This type of prospective incorporation has been challenged numerous times and the validity of this practice is currently awaiting a decision by the Court of Appeals in the *City of Vacaville v. State Water Resources Control Board and California Regional Water Quality Control Board for the Central Valley* case (First Appellate District, Division 4, Case No. A127207). As the legality of this practice is currently uncertain, the Regional Board should refrain from adopting a similar approach that suffers from the following legal infirmities.

Further, performance of a proper section 13241 analysis and adoption of a section 13242 implementation plan for these newly and automatically incorporated MCLs would be impossible because these WQOs *prospectively* incorporate by reference currently-unknown standards of other entities.

A necessary and unavoidable corollary of the rule established by the *Williams* case prohibiting incorporation by reference without independent analysis is that *prospective* incorporation by reference is never permissible. An agency cannot conduct an independent analysis of another agency’s regulations or actions *before* such third party’s regulation or action is even known. *Williams* did not involve prospective incorporation but, based on the underlying principles articulated, that court recognized that prospective incorporation by reference necessarily would have “dubious validity.” (*Williams, supra*, 4 Cal.App.3d at p. 814.) The deficiencies of such practice include: removal of the obliged agency and affected public from the relevant decision making process; effective avoidance by the agency of actually conducting a rulemaking proceeding; complete inability of the regulated public to know, let alone object to, the specific matter being incorporated; and improper delegation of authority and responsibility. (Bonfield, *State Administrative Rule Making* (1986) pp. 325-326.)

Here, the Regional Board is obliged to conduct the analysis required by Water Code section 13241. Water Code section 13223(a) reinforces this obligation. That provision allows the Regional Board to delegate any “powers and duties vested in it . . . to its executive officer *excepting only* the following: . . . (2) the issuance, modification, or revocation of any water quality control plan, *water quality objectives*, or waste discharge requirement . . .” (Wat. Code, §13223(a), emphasis added.) By incorporating standards developed and approved by another

entity as WQOs, without any independent analysis as required by Water Code §13241 and *Williams*, the Regional Board would be improperly delegating its responsibility for establishing WQOs. Water Code §13223(a) confirms that the Regional Board is *precluded* from adopting WQOs that incorporate by reference matters that are not the product of the Regional Board's own *independent* rulemaking.

Establishing WQOs, present or future, is the exclusive province of the Regional Board. The Regional Board may make use of the expertise of other entities as *guidance* in determining appropriate WQOs, but it may not rely on others to perform its legal obligation to develop WQOs that are reasonable and to conduct the required analysis.

E. The Proposed Removal of the Objectives Table 3-2 Will Impair the Public's Access to Information.

The new Chemical Constituents Objective proposes to incorporate by reference MCLs adopted by DPH. The Staff Report states that "[m]aintaining a table containing values consistent with CCR [California Code of Regulations] would require continual updating of the Basin Plan." (*See Staff Report* at 3-12.) The table should be maintained so that people attempting to determine compliance with the Basin Plan objectives do not have to resort to other documents.⁴

F. "At a Minimum" Standards Lack the Clarity Required of a Valid Regulation.

Many of the proposed new objectives begin with the words "[a]t a minimum." This injects uncertainty into the regulatory scheme and makes it difficult to adequately perform a section 13241 analysis or implement a compliance plan, since it is unclear whether the objective being imposed is the one set forth in the Basin Plan or something more stringent as alluded to by the "at a minimum" language. Regulations need to be clear or they are subject to being voided for vagueness. For this reason, the words "at a minimum" must be removed from the proposed modified objectives (*e.g.*, "Pesticides" objective, "Radioactivity" objective, and "Chemical Constituents" objective) since those objectives are presumably being set a level that will provide reasonable protection of the designated beneficial uses.

G. Water Quality Standards Must be Established for Specific Designated Uses

The Regional Board proposes to modify the language of several objectives to delete language referring to waters with a "designated" use and instead apply the objectives whether or not a use is designated. (*See Staff Report* at 3-7.) This proposal is vague, contradicts clear requirements in Water Code sections 13241 and 13263 that water quality objectives and discharge requirements be linked to protection of beneficial uses, and will lead to confusion as to when objectives apply. If the Regional Board believes that "designated" uses do not reflect the actual "existing" uses, then the appropriate step is to modify the Basin Plan to add more waters as designated for that existing use, not to remove reference to designated uses.

⁴ In addition, maintenance of the table would avoid problems associated with prospective incorporation by reference.

In addition, the Regional Board should review some of its use designations that appear to be overbroad, such as the designation of the Laguna and Santa Rosa Hydrologic Subareas as an existing COLD freshwater habitat. The COLD designation may be appropriate seasonally (winter) but not summer. No evidence exists cold water habitat is an existing or historical beneficial during the summer. As such, this seems to be an erroneous "existing" use designation that may drive excessive and unnecessary regulation. Such designations are also subject to triennial review and must be revisited to ensure that they are accurate. (40 C.F.R. §131.20(a); Wat. Code §13240.)

H. The Proposed Modifications to the Antidegradation Analysis Section Must be Clarified.

The Regional Board's analysis suffers from a fundamental misunderstanding of the scope and application of the State's anti-degradation policy (Res. 68-16). Antidegradation analyses are necessary where the state proposes to take a specific action (e.g., permitting or licensing) in regards to an activity that may degrade existing high quality waters, and mandates that the existing high quality water be maintained unless the State determines some degradation is acceptable in the interests of the maximum benefit to the people of the State. That analysis has not been accurately performed and should be revised before this Basin Plan amendment proceeds to adoption.

Nonetheless, the proposed modifications to the section of the Basin Plan on Antidegradation Analysis should be clarified as follows:

1) Maintenance of the phrase "is better than" the water quality objectives is more accurate than the proposed word "exceeds" in relation to the water quality objectives since for some objectives (such as pH and DO, "exceeds" may not be an appropriate term). For this reason, the first proposed modification to Section 3.3.1 should not be made.

2) The characterization of the intertwining of the state and federal antidegradation policies is incorrect. The state's Antidegradation Policy was adopted as a resolution in 1968, which *preceded* the Clean Water Act's adoption in 1972 and the subsequent regulations that incorporated antidegradation requirements. (40 C.F.R. §131.12.) Thus, the second to last sentence in the first paragraph of Section 3.3.1 should be modified to read:

The State Water Board has interpreted the state Antidegradation Policy to ~~incorporate~~ be consistent with the federal Antidegradation Policy where the federal policy applies.

3) Remove the paragraph stating that "[u]nder the federal Antidegradation Policy, an activity that results in a discharge would be prohibited if the discharge will lower the quality of surface waters that do not currently attain standards." This is not an accurate characterization of the law and would ostensibly prohibit currently permitted discharges. In waters not meeting standards, existing instream water uses and the level of water quality necessary to protect the existing uses must be maintained. (40 C.F.R. §131.12(a)(1).) That is not the same as prohibiting discharges. Further, TMDLs that contain compliance schedules may authorize the continuing discharge to a water body described above, and the proposed amendment language would call into question this practice, which is sanctioned by federal law.

4) Remove the statement that antidegradation policies are “enforceable independent of this Basin Plan provision” as that statement is unsupported and does not accurately reflect current law.

5) Finally, the last sentence stating that this is merely a summary provided for the convenience of the reader should be maintained, as that is all this section represents.

I. The Narrative Objective Translator

Where, as here, a state regulatory agency utilizes narrative water quality standards instead of numeric standards, the state must provide information sufficient to apprise the public as to how their discharges will be regulated. This mandatory information is called a “translator” mechanism. While CASA and Tri-TAC consider clear and appropriate translators to be essential to water quality regulation, the approach proposed in the Basin Plan amendments is highly problematic.

In establishing water quality criteria or objectives to protect designated uses, the States are not without guidance. Under CWA section 304(a), the United States Environmental Protection Agency (“EPA”) is required to publish new and revised “criteria documents” to help the States develop water quality criteria which reflect the latest scientific knowledge. (33 U.S.C. §1314(a)(1).) EPA regulations provide that States should develop numeric criteria based on the EPA’s criteria guidance under CWA section 304(a), EPA’s criteria guidance modified to reflect site specific conditions, or other scientifically defensible methods. (*See* 40 C.F.R. §131.11(b)(1); 48 Fed. Reg. 51,400, 51,411 (1983). These requirements ensure that the State engages in the analytical processes mandated by State law so that the criteria adopted by the States are tailored to each State’s own particular conditions and requirements.

Where the EPA has published numeric criteria guidance for specific toxic pollutants under CWA section 304(a) [33 U.S.C. § 1314(a)], and it is determined that the specific pollutant can reasonably be expected to interfere with the states’ designated uses of their waters, the states must adopt numeric water quality criteria for such toxic pollutants. (33 U.S.C. §1313(c)(2)(B).) The Regional Board is not in compliance with this directive to the extent the Regional Board is still relying on the use of a narrative objective for pollutants where criteria guidance exists. EPA section 304(a) criteria guidance exists for at least 126 priority pollutants. (*See* 40 C.F.R. §131.36(b)(1).) The Regional Board has only adopted a few numeric criteria for only a handful of these toxic pollutants. (AR 903-925.) In other words, the Regional Board has, in the first instance, impermissibly left the regulation of these pollutants to its narrative criteria.

Moreover, instead of proposing to incorporate the National and California Toxics Rule criteria into the Basin Plan, those criteria must be reviewed (since no such review has been done since 1992 or 2000, respectively, for these criteria) under the requirements of the Water Code to ensure that these criteria make sense site-specifically. For example, the Bay Area Clean Water Agencies performed a site specific objective study on cyanide that determined that the crab species used to set the national EPA criteria for cyanide was only indigenous to the East Coast and not found on the West Coast. Adjustment of the criteria to correct for this site specific consideration modified the objective, negating the need for additional treatment that would have been costly to meet but would not have provided a water quality benefit. Therefore, in addition

to adding a narrative translator, the Regional Board should adopt numeric criteria that have been demonstrated to be reasonable and achievable for local waterways.

In instances where numeric criteria are not available or cannot be ascertained from the EPA's guidance, states are allowed to establish narrative criteria sufficient to protect designated uses in the interim until numeric criteria are adopted. (*Id.*; 40 C.F.R. § 131.11(b)(2).) However, where a State adopts narrative, rather than numeric, criteria to protect designated uses, the State must also adopt a "translator" procedure that addresses all mechanisms to be used by the State to ensure that narrative criteria are attained. (AR 504, 507-14 (EPA Water Quality Standards Handbook, Second Edition).) The requirement of a translator procedure is not only intended to give the public and regulated community fair notice of what is expected of them, but also to ensure that the narrative criteria have clear bounds and a rational basis for their implementation. (*See id.*) Thus, "[t]he combination of a narrative standard . . . and an approved translator mechanism as part of a State's water quality standards satisfies the requirements of CWA section 303(c)(2)(B)." (57 Fed. Reg. 60848, 60853 (1992).)

The Regional Board is proposing such a translator, but it fails to comply with state law requirements. This translator must provide "information identifying the method by which the State intends to regulate point source discharges of toxic pollutants . . . based on such narrative criteria." (40 C.F.R. § 131.11(a)(2); *see accord Cities of Los Angeles, Burbank, Simi Valley and County Sanitation Districts of Los Angeles County v. U.S. EPA*, Case No. CV 00-8919, Order Granting Plaintiffs' Motion for Summary Judgment and Remanding Action to EPA (Dec. 18, 2001 (overturning EPA's approval of narrative objectives without an appropriate translator mechanism) .)

In EPA's official guidance documents, EPA explains at length the process the State must go through to implement an adequate translator mechanism. Among other things, EPA provides that a State's translator procedure for narrative criteria should specifically describe:

- specific, scientifically defensible methods by which the state will implement its narrative toxics standard for all toxics;
- how these methods will be integrated into the State's toxics control program;
- methods the State will use to identify those pollutants to be regulated in a specific discharge;
- an incremental cancer risk for carcinogens;
- methods for identifying compliance thresholds in permits where calculated limits are below detection;
- methods for selecting appropriate hardness, pH, and temperature variables for criteria expressed as functions;
- methods or policies controlling the size and in-zone quality of mixing zones;

- design flows to be used in translating chemical-specific numeric criteria for aquatic life and human health into permit limits; and
- other methods and information needed to apply standards on a case-by-case basis.

(See EPA Water Quality Standards Handbook, 2nd Ed.) EPA further stated that the State's translator procedure "be submitted to EPA for review and approval." Thus, by its own policies, EPA must review the scientific merit of the State's translator mechanism where a narrative standard is used to regulate toxic pollutants, and must verify the requirement that such translator be applied whenever toxic pollutants may reasonably be expected to exist or be discharged. (See also 57 Fed. Reg. 60853, 60855 (1992).)

We have several concerns with the particular translator approach proposed by Regional Board staff. First, the documents identified as "relevant site specific information" do not appear to actually be site specific. For example, the list includes "numeric criteria and guidelines developed and published by other governmental and non-governmental agencies and organizations [footnote listing state, national and international entities], direct evidence of impacts to waters of the state, all material and relevant information submitted by the discharger and interested parties, peer-reviewed scientific literature." Besides the information submitted by the discharger, none of the other information appears to be site specific. Further, no indication is provided as to how the relevant information will be evaluated— it appears the Regional Board has full discretion to pick any number it can find.

Nor is the *Compilation of Water Quality Goals* "site specific" to the North Coast region. This document is merely another form of literature review and catalogue of all criteria from any source that might possibly be utilized for water quality purposes somewhere in the world. These general lists of potential criteria are too vague to allow regulated entities to be aware of what the potential requirements placed upon them might be.

To remedy this, we have the following suggested changes:

Amend Step 1 to identify the beneficial uses to include a determination as to whether a designated use is actually an existing use or merely an historic or probable future use.

Amend Step 3 as follows: "Consider all appropriate sources of possible applicable numeric limits relevant to the site specific location of the discharge from established sources of numeric water quality criteria and standards developed and published by governmental and non-governmental agencies and organizations and other information supplied by the Regional Water Board, the permittee, and interested parties."

Amend Step 5 as follows: "For each constituent or parameter of concern, select the most appropriate numeric limit or range of limits that would reasonably protect all applicable affected existing beneficial uses.

Amend Step 6 as follows: "Comply with the requirements of Water Code section 13263, including the analysis required under section 13241, and consider all applicable policies and regulations that ~~which~~ require further modification to the selected range of limits or levels.

For the final paragraph, the Regional Board should consider adding that if reasonable potential for toxicity exists, then a narrative toxicity effluent limitation may be included, although these are not necessary where chemical specific limits are expected to attain standards. This would be consistent with federal regulations at 40 C.F.R. §122.44(d)(1)(v). Each of these steps should be laid out clearly in the fact sheet for any proposed regulatory permit or waiver so that the regulated community and the public are fully aware of how proposed limits are being derived from narrative objectives.

We believe that these changes will represent a more rigorous and consistent approach to determining what limits are appropriate for interpreting a narrative water quality objective.

We thank you for your consideration of these comments. If you have any questions, please contact Mr. Lynn M. Small, Deputy Director Environmental Services, of my staff at telephone number (707) 543-3350.

Sincerely,

A handwritten signature in cursive script that reads "Miles Ferris".

Miles Ferris
Director of Utilities

Roberta Larson, Director, Legal & Regulatory Affairs, CASA
Dave Smith, Merritt Smith Consulting



Tri-TAC

Jointly Sponsored by:
League of California Cities
California Association of Sanitation Agencies
California Water Environment Association

March 29, 2012

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Via Electronic Mail

North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403
Attn: Lauren Clyde
LClyde@waterboards.ca.gov

Subject: Proposed Amendments to the *Water Quality Control Plan for the North Coast Region* to Update Water Quality Objectives

Dear Ms. Clyde:

The California Association of Sanitation Agencies (CASA) and Tri-TAC appreciate the opportunity to provide comments on the proposed amendment to the Water Quality Control Plan (Basin Plan) for the North Coast Region. CASA and Tri-TAC are statewide organizations comprised of members from public agencies and other professionals responsible for wastewater treatment. Tri-TAC is sponsored jointly by CASA, the California Water Environment Association, and the League of California Cities. The constituency base for CASA and Tri-TAC collects, treats and reclaims more than two billion gallons of wastewater each day and serves most of the sewered population of California. Our associations do not routinely comment on matters within individual regions, except in cases such as this, where the proposed regional actions have significant statewide implications.

We appreciate that the Regional Water Quality Control Board for the North Coast Region (Regional Board) is endeavoring to update its Basin Plan. A sound Basin Plan is the foundation for water quality regulation, and ensuring the plan is up to date and reflects the most current policy and science is key to development of appropriate permits and other actions. However, we are concerned that the proposed amendments may not be compliant with state and/or federal law requirements.

A. California Environmental Quality Act (CEQA) Compliance

The proposed amendments fail to comply with CEQA, including defining the appropriate baseline for the analysis, defining the project,¹ and considering alternatives, including the “no project” alternative.² (See proposed amendments at pp. 5-1 through 5-5, 5-7 through 5-42; see also CEQA Guidelines § 15126.6(e).) The environmental checklist’s determination of “[n]o significant or potentially significant adverse impacts” and of no impact beyond baseline is not supported, given that the proposed amendments, including new or modified water quality objectives, will undoubtedly result in new or modified permit requirements that demand “on the ground” facility or operational modifications. (See Staff Report at p. 5-4.) Such a “conclusory statement ‘unsupported by empirical or experimental data, scientific authorities, or explanation of any kind’ not only fails to crystallize issues but ‘affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.’ ” (*Whitman v. Bd. of Supervisors* (1979) 88 Cal.App.3d 397, 411 (citations omitted).) In addition, none of the possible impacts were explored because the CEQA analysis was premised on an erroneous assumption that “the proposed WQO Update Amendment will not cause any change to the existing regulatory programs.” (*Id.*; see also Staff Report at p. 1-2.)

The CEQA analysis must be revised to more accurately define the project, explore alternatives, and to contemplate the likelihood of facility or operational modifications resulting from implementation of the proposed amendments in the form of new permit requirements (e.g., those derived from the proposed narrative translator) or Total Maximum Daily Load (TMDL) provisions if ambient water quality, as evaluated by the proposed new water quality objectives, is not attained in various receiving waters. Facility or operational modifications may have air, noise, visual, and/or water quality-related impacts. These must be explored before the proposed amendments are finalized.

B. MCLs May Not Be Directly Incorporated Into the Chemical Constituents Objective Without the Required Independent Analysis

The proposed Basin Plan amendment states that it includes a new water quality objective in what is being called the “general chemical constituents objective for municipal and domestic water supplies” or the “general chemical constituents objective” (hereinafter “Chemical Constituents Objective”) (See Staff Report at p. 3-2.) This characterization is flawed because this is not a new, single objective; it is instead the incorporation by reference of numerous primary and secondary maximum contaminant level (MCL) drinking water standards adopted by

¹ The “project” must include not just the Regional Board’s proposed amendments, but also the physical improvements that any affected dischargers will need to make to comply. Further, the project’s environmental effects have not been analyzed “in connection with . . . the effects of probable future projects.” (CEQA Guidelines § 15065(a)(3).) The Regional Board has failed to analyze or even identify other present and/or future projects with which the Basin Plan amendments could have cumulative impacts.

² An environmental analysis will be found legally inadequate if it contains an overly narrow range of alternatives. (See, e.g., *Watsonville Pilots Ass’n v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1087.)

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the California Department of Public Health (DPH), which were not developed or adopted as water quality objectives (WQOs) for ambient waters. Instead, these MCLs were designed to apply to treated, finished tap water served to the public for drinking.

DPH implements California's Safe Drinking Water Act (Health & Saf. Code, §§ 116270 *et seq.*), which is intended to "ensure that the *water delivered by public water systems* of this state shall at all times be pure, wholesome, and potable." (*Western States Petroleum Assn. v. State Dept. of Health Services* (2002) 99 Cal.App.4th 999, 1008-1011, emphasis added; Health & Saf. Code, §§ 116270(e), 116270(g), 116275(c), 116275(d).) To further this charge, DPH "adopt[s] primary drinking water standards for contaminants in drinking water." (Health & Saf. Code, § 116365(a).) Primary MCLs are developed for the purpose of protecting the public from possible health effects associated with long-term exposure to contaminants in drinking water. (*Id.* at § 116275(c); *In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 686, citing *Substantive Water Quality Opinion*, 2000 P.U.C. LEXIS 711, at ** 25-26.) MCLs are not adopted by DPH to apply to all of California's waters.

In contrast, the Legislature delegated to the Water Boards the regulation of "activities and factors which may affect the quality of the waters of the state" so as "to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (Wat. Code, § 13000.) The regional boards must consider, among other things: environmental characteristics of the hydrographic unit under consideration, including the quality of the water available thereto; the reasonably achievable water quality conditions of the waterbodies at issue; and economic considerations. (*Id.* at § 13241(b)-(d).) Unlike the Safe Drinking Water Act, the statutory scheme set forth in the Porter-Cologne Water Quality Control Act (Porter Cologne) is aimed at regulating ambient water quality in lakes or rivers or other channels, some fraction of which may or may not ultimately be diverted and treated for municipal use. When an MCL is the basis for an effluent limitation in a discharge permit, exceedance of the effluent limitation constitutes a violation of the permit, triggering potential liability. (Wat. Code, § 13385(a); 33 U.S.C. § 1319.)

The convenience of adopting MCLs as WQOs without further analysis does not justify ignoring a legislative mandate. DPH does not and may not consider the cost of imposing drinking water standards on water *other than* water delivered through public water systems. The two agencies, by law, have different roles and responsibilities and, accordingly, adopt and apply different standards. Promulgation of WQOs lies exclusively with the Water Boards, which must independently comply with the applicable laws. (Wat. Code, §§ 13223(a), 13241, 13242.)

C. The Proposed Incorporation of MCLs Into the Basin Plan Does Not Comply With Water Code Section 13241

The proposed Basin Plan amendment would directly incorporate MCLs that have never been subjected to the Water Code requirements for adoption as separate WQOs under Water Code section 13241. This is contrary to law. (Statement of Decision, *City of Tracy v. State*

Water Resources Control Board, Sacramento County Case Number 34-2009-80000392 (May 10, 2011) at p. 27 (“Water Code section 13241 imposes an affirmative obligation on the State, when establishing water quality objectives, to take into account various factors, including the economic costs of adopting the proposed objective.”).) Many of the MCLs proposed for incorporation into the Chemical Constituents Objective are different from those included in the previous Table 3-2 of the Basin Plan. In fact, the Staff Report states that “the majority of the values presented in Table 3-2 are no longer appropriate as they do not accurately reflect current Title 22 regulations.” (See Staff Report at p. 3-12 (emphasis added).) Further, the Staff Report delineates only a fraction of those changes, namely the removal of lead and the modification of the fluoride MCLs. (See Staff Report at p. 3-4.)

Numerous other MCLs would now be pulled into the Basin Plan that are not currently included in Table 3-2, including the following inorganic chemicals: antimony (0.006 mg/L), asbestos (7 MFL), beryllium (0.004 mg/L), cyanide (0.15 mg/L), nickel (0.1 mg/L), nitrate + nitrite (10 mg/L), nitrite (1 mg/L), perchlorate (0.006 mg/L), thallium (0.002 mg/L); and organic chemicals: 1,2-dichlorobenzene (0.6 mg/L), dichloromethane (0.005 mg/L), MTBE (0.013 mg/L), styrene (0.1 mg/L), toluene (0.15 mg/L), 1,2,4-trichlorobenzene (0.005 mg/L), alachlor (0.002 mg/L), benzo(a)pyrene (0.0002 mg/L), dalapon (0.2 mg/L), dibromochloropropane (0.0002 mg/L), di(2-ethylhexyl)adipate (0.4 mg/L), dinoseb (0.007 mg/L), diquat (0.02 mg/L), endothall (0.1 mg/L), hexachlorobenzene (0.001 mg/L), hexachlorocyclopentadiene (0.05 mg/L), oxamyl (0.05 mg/L), pentachlorophenol (0.001 mg/L), picloram (0.5 mg/L), PCBs (0.0005 mg/L), and 2,3,7,8-TCDD (Dioxin) (3×10^{-8} mg/L). These are substantial additions not even recognized in the Staff Report.

In addition, the new objective would incorporate all secondary MCLs in Title 22 Tables 64449-A and 64449-B, which are not currently incorporated into the Basin Plan, but are merely available for possible use. (See Basin Plan, Table 3-2, fn. 2 (referencing that secondary MCLs “that are more stringent may apply”).) This would add new numeric objectives for color (15 units), copper (1.0 mg/L), foaming agents (MBAS) (0.5 mg/L), iron (0.3 mg/L), manganese (0.05 mg/L), odor (3 Units), turbidity (5 Units), and zinc (5.0 mg/L), and would create more stringent objectives for aluminum (0.2 mg/L), MTBE (0.005 mg/L), silver (0.1 mg/L), and thiobencarb (0.001 mg/L).

The Staff Report identifies at least two of the objectives proposed, for chlorobenzene and endrin, as more stringent than the values presented in the current Table 3-2. (See Staff Report at p. 6-3.³) Nevertheless, the Regional Board has presented no analysis of these changes and how they will impact water quality regulation, how they will be achieved, or what regulated discharges may need to do to comply with these changes. As noted, these MCLs have never

³ The tables of MCLs in Title 22 do not contain an MCL for chlorobenzene and neither does Table 3-2. An MCL for 1,4-Dichlorobenzene is in both places and has not changed. In addition, the MCLs for arsenic and cadmium have gotten more stringent, which was not identified in the Staff Report. (Compare Table 3-2 with Title 22, Table 64431-A.)

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been subjected to the Water Code requirements for adoption as separate WQOs under Water Code section 13241, and that must be done before they are incorporated into the Basin Plan.

The Regional Board must conduct its own independent analysis of the evidence relied on by other agencies before adopting another entity's criteria as its own. (*California Nursing Home Assn. v. Williams* (1970) 4 Cal.App.3d 800, 813-814 (“*Williams*”).) In that case, a California court considered whether the Department of Health Care Service, in its regulations, could adopt standards developed by the Department of Finance for reimbursement rates for certain health care services, “without independent consideration of the underlying evidence and without public or judicial access to [that evidence].” (*Id.* at pp. 813-814.) The court held that to do so, “transgresses fundamental demands for the adoption of administrative regulations.” (*Id.* at p. 814.) Further, the court held that the statute “*enjoins the Director of Health Care Services, no one else, to adopt regulations* establishing these rates. In the enactment of these regulations *he, no one else*, is to receive and consider the evidence which will permit compliance with the statutory standard” (*Id.* at p. 815, emphasis added.)

The Regional Board's obligation to conduct an independent analysis is critical since other entities are not required to consider the same statutorily mandated factors that the Regional Board must consider when adopting WQOs. As stated above, the Regional Board has failed to conduct any independent analysis of the DPH MCLs (i.e., drinking water standards applicable to tap water) before proposing to adopt such standards as WQOs for rivers, streams, and other waterways and groundwaters throughout the North Coast. Thus, the Regional Board has failed to comply with applicable law in the proposed adoption of these “borrowed” standards. Porter-Cologne mandates the consideration and balancing of a number of factors, including economics and the reasonable attainability of WQOs in affected waters, which has not been done.

The Chief Counsel of the State Water Resources Control Board (SWRCB) has explained in detail the “affirmative duty” of the regional boards to apprise themselves of the cost and other potential consequences of any proposed WQO, and to engage in a “balancing” process in order to arrive at WQOs that are “reasonable”:

A Regional Water Board is under an affirmative duty to consider economics when adopting water quality objectives in water quality control plans To fulfill this duty, the Regional Water Board should assess the costs of the proposed adoption of a water quality objective.

. . .

If the potential economic impacts of the proposed adoption of a water quality objective appear to be significant, the Regional Water Board must articulate why adoption of the objective is necessary to assure the reasonable protection of beneficial uses of state waters, despite the potential adverse economic consequences.

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...

[O]bjectives must be reasonable and economic considerations are a necessary part of the determination of reasonableness. The regional boards must balance environmental characteristics, past, present and future beneficial uses, and economic considerations (both the cost of providing treatment facilities and the economic value of development) in establishing plans to achieve the highest water quality which is reasonable.

...

The State or Regional Water Board's rationale for determining that adoption of a proposed objective is necessary to protect water quality, despite adverse economic consequences, must be discernible from the record. (SWRCB Chief Counsel Memorandum from William R. Attwater, to Regional Water Board Executive Officers, *Guidance on Consideration of Economics in the Adoption of Water Quality Objectives*, January 4, 1994.)

With respect to the WQOs proposed to be incorporated into the Chemical Constituents Objective, no evidence exists that the Regional Board has adequately complied with Water Code sections 13241 and 13242. In fact, without citation to any evidence, the Regional Board concludes that "there will be no additional costs incurred as a result of the adoption of the proposed WQO Update Amendment." (See Staff Report at p. 5-43.) The Regional Board simply proposes to incorporate the DPH MCLs, without any independent analysis of each of the factors required by Water Code § 13241 for each of the proposed new MCLs being incorporated. The Regional Board did not make a reasonable attempt to determine the cost of compliance, balance public interest factors, or create an implementation plan for each MCL.

The Regional Board staff purports to have performed a Water Code section 13241 analysis for all changes set forth on pages 7-1 through 7-5 of the Staff Report. This "analysis" is clearly inadequate. First, the analysis admits "there is insufficient data to conclude if all groundwaters and surface waters are attaining the proposed objectives." (See Staff Report at p. 7-5.) Without these data, the Regional Board cannot adequately consider the "quality of water available" in the hydrographic units to which these objectives will apply, or the "water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area." (Wat. Code, § 13241(b) and (c).) The Regional Board also somehow concludes that "there will be no additional costs to dischargers or responsible parties to implement the proposed WQO Update Amendment" because the Regional Board erroneously assumes that "the proposed objectives will not change the way staff regulates discharges." (See Staff Report at 7-5.)

If new water quality objectives are adopted, dischargers will have to comply with those new objectives. A presumption that no new treatment technologies will be required to comply with these new objectives is not adequately supported by evidence in the record and does not

comply with the Water Code. In addition, the Regional Board failed to create an implementation plan for any dischargers because of the inaccurate conclusions that “no additional actions would be necessary to achieve the new objectives as implementation of the existing chemical constituents objective and protection of drinking water supplies is already in place,” and “no additional actions beyond those already required as part of the current regulatory programs are needed to achieve compliance with the proposed water quality objectives.” (See Staff Report at p. 7-6.)

The Regional Board, if relying on MCLs from DPH, must also consider the Best Available Technologies (BAT) identified by that agency that have been stated would be necessary to treat drinking water to the MCLs. These technologies include, but are not limited to, coagulation/filtration, granular activated carbon, ion exchange, reverse osmosis, electrodialysis, oxidation, and lime softening. (See e.g., Title 22 at Tables 64447.2A, 64447.3A, B and C.) Since similar technologies would be needed for wastewater or stormwater to achieve these same MCLs, the costs of these treatment technologies must be included in any proper Water Code section 13241 analysis.

D. Unlawful Incorporation By Reference of New MCLs in the Future

In an attempt to limit the work required to maintain a table of applicable objectives, the proposed amendment seeks to incorporate the changes to the MCLs *automatically and prospectively*. (*Id.*) This type of prospective incorporation has been challenged numerous times and the validity of this practice is currently awaiting a decision by the Court of Appeals in the *City of Vacaville v. State Water Resources Control Board and California Regional Water Quality Control Board for the Central Valley* case (First Appellate District, Division 4, Case Number A127207). As the legality of this practice is currently uncertain, the Regional Board should refrain from adopting a similar approach that suffers from the following legal infirmities.

Further, performance of a proper Water Code section 13241 analysis and adoption of a section 13242 implementation plan for these newly and automatically incorporated MCLs would be impossible because these WQOs *prospectively* incorporate by reference currently-unknown standards of other entities.

A necessary and unavoidable corollary of the rule established by the *Williams* case prohibiting incorporation by reference without independent analysis is that *prospective* incorporation by reference is never permissible. An agency cannot conduct an independent analysis of another agency’s regulations or actions *before* such third party’s regulation or action is even known. *Williams* did not involve prospective incorporation but, based on the underlying principles articulated, that court recognized that prospective incorporation by reference necessarily would have “dubious validity.” (*Williams, supra*, 4 Cal.App.3d at p. 814.) The deficiencies of such practice include: removal of the obliged agency and affected public from the relevant decision making process; effective avoidance by the agency of actually conducting a rulemaking proceeding; complete inability of the regulated public to know, let alone object to,

the specific matter being incorporated; and improper delegation of authority and responsibility. (Bonfield, *State Administrative Rule Making* (1986) pp. 325-326.)

Here, the Regional Board is obliged to conduct the analysis required by Water Code section 13241. Water Code section 13223(a) reinforces this obligation. That provision allows the Regional Board to delegate any “powers and duties vested in it . . . to its executive officer *excepting only* the following: . . . (2) the issuance, modification, or revocation of any water quality control plan, *water quality objectives*, or waste discharge requirement . . .” (Wat. Code, § 13223(a), emphasis added.) By incorporating standards developed and approved by another entity as WQOs, without any independent analysis as required by Water Code section 13241 and *Williams*, the Regional Board would be improperly delegating its responsibility for establishing WQOs. Water Code section 13223(a) confirms that the Regional Board is *precluded* from adopting WQOs that incorporate by reference matters that are not the product of the Regional Board’s own *independent* rulemaking.

Establishing WQOs, present or future, is the exclusive province of the Regional Board. The Regional Board may make use of the expertise of other entities as *guidance* in determining appropriate WQOs, but it may not rely on others to perform its legal obligation to develop WQOs that are reasonable and to conduct the required analysis.

E. The Proposed Removal of the Objectives Table 3-2 Will Impair the Public’s Access to Information

The new Chemical Constituents Objective proposes to incorporate by reference MCLs adopted by DPH. The Staff Report states that “[m]aintaining a table containing values consistent with CCR [California Code of Regulations] would require continual updating of the Basin Plan.” (See Staff Report at p. 3-12.) The table should be maintained so that people attempting to determine compliance with the Basin Plan objectives do not have to resort to other documents.⁴

F. “At a Minimum” Standards Lack the Clarity Required of a Valid Regulation

Many of the proposed new objectives begin with the words “[a]t a minimum.” This injects uncertainty into the regulatory scheme and makes it difficult to adequately perform a Water Code section 13241 analysis or implement a compliance plan, since it is unclear whether the objective being imposed is the one set forth in the Basin Plan or something more stringent as alluded to by the “at a minimum” language. Regulations need to be clear or they are subject to being voided for vagueness. For this reason, the words “at a minimum” must be removed from the proposed modified objectives (e.g., “Pesticides” objective, “Radioactivity” objective, and “Chemical Constituents” objective) since those objectives are presumably being set a level that will provide reasonable protection of the designated beneficial uses.

⁴ In addition, maintenance of the table would avoid problems associated with prospective incorporation by reference.

G. Water Quality Standards Must be Established for Specific Designated Uses

The Regional Board proposes to modify the language of several objectives to delete language referring to waters with a “designated” use and instead apply the objectives whether or not a use is designated. (See Staff Report at p. 3-7.) This proposal is vague, contradicts clear requirements in Water Code sections 13241 and 13263 that WQOs and discharge requirements be linked to protection of beneficial uses, and will lead to confusion as to when objectives apply. If the Regional Board believes that “designated” uses do not reflect the actual “existing” uses, then the appropriate step is to modify the Basin Plan to add more waters as designated for that existing use, not to remove reference to designated uses.

In addition, the Regional Board should review some of its use designations that appear to be overbroad, such as the designation of Humboldt Bay as an existing MUN drinking water use. No evidence exists that there are any drinking water intakes from Humboldt Bay or that Humboldt Bay can attain the MCLs, including those for salinity. As such, this seems to be an erroneous “existing” use designation that may drive excessive and unnecessary regulation. Such designations are also subject to triennial review and must be revisited to ensure that they are accurate. (40 C.F.R. § 131.20(a); Wat. Code, § 13240.)

H. The Proposed Modifications to the Antidegradation Analysis Section Must Be Clarified

The Regional Board’s analysis suffers from a fundamental misunderstanding of the scope and application of the State’s antidegradation policy (SWRCB Resolution 68-16). Antidegradation analyses are necessary where the state proposes to take a specific action (e.g., permitting or licensing) in regards to an activity that may degrade existing high quality waters, and mandates that the existing high quality water be maintained unless the State determines some degradation is acceptable in the interests of the maximum benefit to the people of the State. That analysis has not been accurately performed and should be revised before this Basin Plan amendment proceeds to adoption.

Nonetheless, the proposed modifications to the section of the Basin Plan on Antidegradation Analysis should be clarified as follows:

- Maintenance of the phrase “is better than” the WQOs is more accurate than the proposed word “exceeds” in relation to the WQOs since for some objectives (such as pH and DO, “exceeds” may not be an appropriate term). For this reason, the first proposed modification to Section 3.3.1 should not be made.
- The characterization of the intertwining of the state and federal antidegradation policies is incorrect. The state’s Antidegradation Policy was adopted as a resolution in 1968, which *preceded* the Clean Water Act’s (CWA) adoption in 1972, and the subsequent regulations that incorporated antidegradation requirements. (40 C.F.R. § 131.12.) Thus, the second to last sentence in the first paragraph of Section 3.3.1 should be modified to read:

The State Water Board has interpreted the state Antidegradation Policy to ~~incorporate~~ be consistent with the federal Antidegradation Policy where the federal policy applies.

- Remove the paragraph stating that “[u]nder the federal Antidegradation Policy, an activity that results in a discharge would be prohibited if the discharge will lower the quality of surface waters that do not currently attain standards.” This is not an accurate characterization of the law and would ostensibly prohibit currently permitted discharges. In waters not meeting standards, existing instream water uses and the level of water quality necessary to protect the existing uses must be maintained. (40 C.F.R. § 131.12(a)(1).) That is not the same as prohibiting discharges. Further, TMDLs that contain compliance schedules may authorize the continuing discharge to a water body described above, and the proposed amendment language would call into question this practice, which is sanctioned by federal law.
- Remove the statement that antidegradation policies are “enforceable independent of this Basin Plan provision” as that statement is unsupported and does not accurately reflect current law.
- Finally, the last sentence stating that this is merely a summary provided for the convenience of the reader should be maintained, as that is all this section represents.

I. The Narrative Objective Translator

Where, as here, a state regulatory agency utilizes narrative water quality standards instead of numeric standards, the state must provide information sufficient to apprise the public as to how their discharges will be regulated. This mandatory information is called a “translator” mechanism. While CASA and Tri-TAC consider clear and appropriate translators to be essential to water quality regulation, the approach proposed in the Basin Plan amendments is highly problematic.

In establishing water quality criteria or objectives to protect designated uses, the States are not without guidance. Under CWA section 304(a), the United States Environmental Protection Agency (EPA) is required to publish new and revised “criteria documents” to help the States develop water quality criteria which reflect the latest scientific knowledge. (33 U.S.C. § 1314(a)(1).) EPA regulations provide that States should develop numeric criteria based on the EPA’s criteria guidance under CWA section 304(a), EPA’s criteria guidance modified to reflect site specific conditions, or other scientifically defensible methods. (See 40 C.F.R. §131.11(b)(1); 48 Fed. Reg. 51,400, 51,411 (1983).) These requirements ensure that the State engages in the analytical processes mandated by State law so that the criteria adopted by the States are tailored to each State’s own particular conditions and requirements.

Where the EPA has published numeric criteria guidance for specific toxic pollutants under CWA section 304(a) [33 U.S.C. § 1314(a)], and it is determined that the specific pollutant

can reasonably be expected to interfere with the states' designated uses of their waters, the states must adopt numeric water quality criteria for such toxic pollutants. (33 U.S.C. §1313(c)(2)(B).) The Regional Board is not in compliance with this directive to the extent the Regional Board is still relying on the use of a narrative objective for pollutants where criteria guidance exists. CWA section 304(a) criteria guidance exists for at least 126 priority pollutants. (See 40 C.F.R. §131.36(b)(1).) The Regional Board has only adopted a few numeric criteria for only a handful of these toxic pollutants. In other words, the Regional Board has, in the first instance, impermissibly left the regulation of these pollutants to its narrative criteria.

Moreover, instead of proposing to incorporate the National and California Toxics Rule criteria into the Basin Plan, those criteria must be reviewed (since no such review has been done since 1992 or 2000, respectively, for these criteria) under the requirements of the Water Code to ensure that these criteria make sense site-specifically. For example, the Bay Area Clean Water Agencies performed a site-specific objective study on cyanide that determined that the crab species used to set the national EPA criteria for cyanide was only indigenous to the East Coast and not found on the West Coast. Adjustment of the criteria to correct for this site-specific consideration modified the objective, negating the need for additional treatment that would have been costly to meet but would not have provided a water quality benefit. Therefore, in addition to adding a narrative translator, the Regional Board should adopt numeric criteria that have been demonstrated to be reasonable and achievable for local waterways.

In instances where numeric criteria are not available or cannot be ascertained from the EPA's guidance, states are allowed to establish narrative criteria sufficient to protect designated uses in the interim until numeric criteria are adopted. (*Id.*; 40 C.F.R. § 131.11(b)(2).) However, where a State adopts narrative, rather than numeric, criteria to protect designated uses, the State must also adopt a "translator" procedure that addresses all mechanisms to be used by the State to ensure that narrative criteria are attained. (AR 504, 507-14 (EPA Water Quality Standards Handbook, Second Edition).) The requirement of a translator procedure is not only intended to give the public and regulated community fair notice of what is expected of them, but also to ensure that the narrative criteria have clear bounds and a rational basis for their implementation. (See *id.*) Thus, "[t]he combination of a narrative standard . . . and an approved translator mechanism as part of a State's water quality standards satisfies the requirements of CWA section 303(c)(2)(B)." (57 Fed.Reg. 60848, 60853 (1992).)

The Regional Board is proposing such a translator, but it fails to comply with state law requirements. This translator must provide "information identifying the method by which the State intends to regulate point source discharges of toxic pollutants . . . based on such narrative criteria." (40 C.F.R. § 131.11(a)(2); see *accord Cities of Los Angeles, Burbank, Simi Valley and County Sanitation Districts of Los Angeles County v. U.S. EPA*, Case No. CV 00-8919, Order Granting Plaintiffs' Motion for Summary Judgment and Remanding Action to EPA (Dec. 18, 2001 (overturning EPA's approval of narrative objectives without an appropriate translator mechanism).)

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In EPA's official guidance documents, EPA explains at length the process the State must go through to implement an adequate translator mechanism. Among other things, EPA provides that a State's translator procedure for narrative criteria should specifically describe:

- specific, scientifically defensible methods by which the state will implement its narrative toxics standard for all toxics;
- how these methods will be integrated into the State's toxics control program;
- methods the State will use to identify those pollutants to be regulated in a specific discharge;
- an incremental cancer risk for carcinogens;
- methods for identifying compliance thresholds in permits where calculated limits are below detection;
- methods for selecting appropriate hardness, pH, and temperature variables for criteria expressed as functions;
- methods or policies controlling the size and in-zone quality of mixing zones;
- design flows to be used in translating chemical-specific numeric criteria for aquatic life and human health into permit limits; and
- other methods and information needed to apply standards on a case-by-case basis.

(See EPA Water Quality Standards Handbook, Second Ed.)

EPA further stated that the State's translator procedure "be submitted to EPA for review and approval." Thus, by its own policies, EPA must review the scientific merit of the State's translator mechanism where a narrative standard is used to regulate toxic pollutants, and must verify the requirement that such translator be applied whenever toxic pollutants may reasonably be expected to exist or be discharged. (See also, 57 Fed.Reg. 60853, 60855.)

We have several concerns with the particular translator approach proposed by Regional Board staff. First, the documents identified as "relevant site specific information" do not appear to actually be site-specific. For example, the list includes "numeric criteria and guidelines developed and published by other governmental and non-governmental agencies and organizations [footnote listing state, national and international entities], direct evidence of impacts to waters of the state, all material and relevant information submitted by the discharger and interested parties, peer-reviewed scientific literature." Besides the information submitted by the discharger, none of the other information appears to be site-specific. Further, no indication is

provided as to how the relevant information will be evaluated – it appears the Regional Board has full discretion to pick any number it can find.

Nor is the *Compilation of Water Quality Goals* “site specific” to the North Coast region. This document is merely another form of literature review and catalogue of all criteria from any source that might possibly be utilized for water quality purposes somewhere in the world. These general lists of potential criteria are too vague to allow regulated entities to be aware of what the potential requirements placed upon them might be.

To remedy this, we have the following suggested changes:

- **Amend Step 1** to identify the beneficial uses to include a determination as to whether a designated use is actually an existing use or merely an historic or probable future use.
- **Amend Step 3** as follows: “Consider all appropriate sources of possible applicable numeric limits relevant to the site specific location of the discharge from established sources of numeric water quality criteria and standards developed and published by governmental and non-governmental agencies and organizations and other information supplied by the Regional Water Board, the permittee, and interested parties.”
- **Amend Step 5** as follows: “For each constituent or parameter of concern, select the most appropriate numeric limit or range of limits that would reasonably protect all applicable ~~affected~~ existing beneficial uses.
- **Amend Step 6** as follows: “Comply with the requirements of Water Code section 13263, including the analysis required under section 13241, and consider all applicable policies and regulations ~~that which~~ require further modification to the selected range of limits or levels.”

For the final paragraph, the Regional Board should consider adding that if reasonable potential for toxicity exists, then a narrative toxicity effluent limitation may be included, although these are not necessary where chemical specific limits are expected to attain standards. This would be consistent with federal regulations at 40 C.F.R. § 122.44(d)(1)(v). Each of these steps should be laid out clearly in the fact sheet for any proposed regulatory permit or waiver so that the regulated community and the public are fully aware of how proposed limits are being derived from narrative objectives.

We believe that these changes will represent a more rigorous and consistent approach to determining what limits are appropriate for interpreting a narrative water quality objective.

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We thank you for your consideration of these comments.

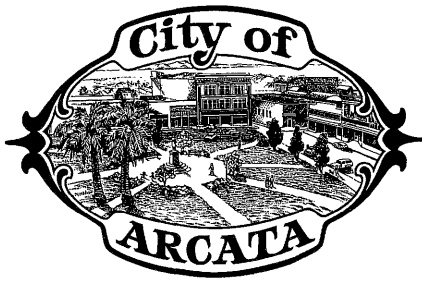
Sincerely,



Terrie Mitchell, Chair
Tri-TAC



Roberta Larson, Director
Legal & Regulatory Affairs
CASA



736 F Street
Arcata, CA 95521

March 29, 2012

Via email (LClyde@waterboards.ca.gov)

North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403
Attn: Lauren Clyde

Subject: **Proposed Amendments to the *Water Quality Control Plan for the North Coast Region* to Update Water Quality Objectives**

Dear Ms. Clyde:

We appreciate that the Regional Water Quality Control Board for the North Coast Region ("Regional Board") is striving to update its Water Quality Control Plan for the North Coast Region ("Basin Plan"). However, we are concerned that these proposed amendments may not be compliant with state and/or federal law requirements and submit the following comments.

A. California Environmental Quality Act ("CEQA") Compliance

The proposed amendments fail to comply with CEQA requirements, including defining the appropriate baseline for the analysis, defining the project,¹ and considering alternatives, including the "no project" alternative.² (See proposed amendments at pp 5-1 – 5-5, 5-7 – 5-42; see also CEQA Guidelines §15126.6(e).) The environmental checklist's determination of "[n]o significant or potentially significant adverse impacts" and of no impact beyond baseline is not supported, given that the proposed amendments, including new or modified water quality objectives, will undoubtedly result in new or modified permit requirements that demand "on the ground" facility or operational modifications. (See *Staff Report* at 5-4.) Such a "conclusory statement 'unsupported by empirical or experimental data, scientific authorities, or explanation of any kind' not only fails to crystallize issues but 'affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.'"

¹ The "project" must include not just the Regional Board's proposed amendments, but also the physical improvements that any affected dischargers will need to make to comply. Further, the project's environmental effects have not been analyzed "in connection with... the effects of probable future projects." (CEQA Guidelines § 15065(a)(3)) The Regional Board has failed to analyze or even identify other present and/or future projects with which the Basin Plan amendments could have cumulative impacts.

² An environmental analysis will be found legally inadequate if it contains an overly narrow range of alternatives. (See, e.g., *Watsonville Pilots Ass'n v. City of Watsonville* (2010) 183 Cal. App. 4th 1059, 1087.)

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(*Whitman v. Bd. of Supervisors* (1979) 88 Cal. App. 3d 397, 411 (citations omitted).) In addition, none of the possible impacts were explored because the premise of the CEQA analysis was based on an erroneous assumption that “the proposed WQO Update Amendment will not cause any change to the existing regulatory programs.” (*Id.*; see also *Staff Report* at 1-2.)

The CEQA analysis must be revised to more accurately define the project, explore alternatives, and to contemplate the likelihood of facility or operational modifications resulting from implementation of the proposed amendments in the form of new permit requirements (*e.g.*, those derived from the proposed narrative translator) or Total Maximum Daily Load (“TMDL”) provisions if ambient water quality, as evaluated by the proposed new water quality objectives, is not attained in various receiving waters. Facility or operational modifications may have air, noise, visual, and/or water quality-related impacts. These must be explored before the proposed amendments are finalized.

B. Chemical Constituents Objective

The proposed Basin Plan amendment states that it includes a new water quality objective in what is being called the “general chemical constituents objective for municipal and domestic water supplies” or the “general chemical constituents objective.” (*See Staff Report* at 3-2.) This characterization is flawed because this is not a new, single objective; it is instead the incorporation by reference of numerous primary and secondary maximum contaminant level (“MCL”) drinking water standards adopted by the California Department of Public Health (“DPH”), which were not designed or adopted as water quality objectives for ambient waters. Instead, these MCLs were designed to apply to treated, finished tap water served to the public for drinking.

DPH implements California’s Safe Drinking Water Act (Health & Saf. Code, §§116270 *et seq.*), which is intended to “ensure that the *water delivered by public water systems* of this state shall at all times be pure, wholesome, and potable.” (*Western States Petroleum Assn. v. State Dept. of Health Services* (2002) 99 Cal.App.4th 999, 1008-1011, emphasis added; Health & Saf. Code, §§116270(e), (g), 116275(c), (d).) To further this charge, the DPH “adopt[s] primary drinking water standards for contaminants in drinking water.” (Health & Saf. Code, §116365(a).) Primary MCLs are developed for the purpose of protecting the public from possible health effects associated with long-term exposure to contaminants in drinking water. (*Id.* at §116275(c); *In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 686, citing *Substantive Water Quality Opinion*, 2000 P.U.C. LEXIS 711, at ** 25-26.) MCLs are not adopted by DPH to apply to all of California’s surface waters.

In contrast, the Legislature delegated to the Water Boards the regulation of “activities and factors which may affect the quality of the waters of the state” so as “to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.” (Wat. Code, §13000.) The regional boards must consider, among other things: environmental characteristics of the hydrographic unit under consideration, including the quality of the water

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available thereto; the reasonably achievable water quality conditions of the waterbodies at issue; and economic considerations. (*Id.* at §13241(b), (c), (d).) Unlike the Safe Drinking Water Act, Porter-Cologne's statutory scheme is aimed at regulating ambient water quality in lakes or rivers or other channels, some fraction of which may or may not ultimately be diverted and treated for municipal use. Ironically, the exceedance of an MCL in water delivered by a drinking water purveyor is not a violation. (*In re Groundwater Cases, supra*, 154 Cal.App.4th at pp. 686-687.) However, when an MCL is the basis for an effluent limitation in a discharge permit, exceedance of the effluent limitation constitutes a violation of the Permit, triggering potential liability. (Wat. Code, §13385(a); 33 U.S.C. §1319.)

The administrative convenience of incorporating the MCLs by reference does not justify ignoring a legislative mandate. DPH does not and may not consider the cost of imposing drinking water standards on water *other than* water delivered through public water systems. The two agencies, by law, have different roles and responsibilities and, accordingly, adopt and apply different standards. Promulgation of WQOs lies exclusively with the Regional Boards, which must independently comply with the applicable laws. (Wat. Code, §§13223(a), 13241, 13242.)

C. Failure to Adequately Comply with Water Code Section 13241

Many of these MCLs proposed for incorporation into the Chemical Constituents objective are different than those that were included in the previous Table 3-2 of the Basin Plan. In fact, the Staff Report states that “the majority of the values presented in Table 3-2 are no longer appropriate as they do not accurately reflect current Title 22 regulations.” (*See Staff Report* at 3-12 (emphasis added).) Further, the Staff Report delineates only a fraction of those changes, namely the removal of lead and the modification of the fluoride MCLs. (*See Staff Report* at 3-4.)

There are numerous other MCLs that would now be pulled into the Basin Plan that are not currently included in Table 3-2, including the following inorganic chemicals: Antimony (0.006 mg/L), Asbestos (7 MFL), Beryllium (0.004 mg/L), Cyanide (0.15 mg/L), Nickel (0.1 mg/L), Nitrate + Nitrite (10 mg/L), Nitrite (1 mg/L), Perchlorate (0.006 mg/L), Thallium (0.002 mg/L); and organic chemicals: 1,2-Dichlorobenzene (0.6 mg/L), Dichloromethane (0.005 mg/L), MTBE (0.013 mg/L), Styrene (0.1 mg/L), Toluene (0.15 mg/L), 1,2,4-Trichlorobenzene (0.005 mg/L), Alachlor (0.002 mg/L), Benzo(a)pyrene (0.0002 mg/L), Dalapon (0.2 mg/L), Dibromochloropropane (0.0002 mg/L), Di(2-ethylhexyl)adipate (0.4 mg/L), Dinoseb (0.007 mg/L), Diquat (0.02 mg/L), Endothall (0.1 mg/L), Hexachlorobenzene (0.001 mg/L), Hexachlorocyclopentadiene (0.05 mg/L), Oxamyl (0.05 mg/L), Pentachlorophenol (0.001 mg/L), Picloram (0.5 mg/L), PCBs (0.0005 mg/L), 2,3,7,8-TCDD (Dioxin) (3×10^{-8} mg/L). These are substantial additions not even recognized in the Staff Report.

In addition, the new objective would incorporate all secondary MCLs in Tables 64449-A and 64449-B, which are not currently incorporated into the Basin Plan, but are merely available for possible use. (*See Basin Plan*, Table 3-2, footnote 2 (referencing that secondary MCLs “that are more stringent may apply”).) This would add new objectives for Color (15 units), Copper (1.0 mg/L), foaming Agents (MBAS) (0.5 mg/L), Iron (0.3 mg/L), Manganese (0.05 mg/L), Odor (3

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Units), Turbidity (5 Units), and Zinc (5.0 mg/L), and would create more stringent objectives for Aluminum (0.2 mg/L), MTBE (0.005 mg/L), Silver (0.1 mg/L), and Thiobencarb (0.001 mg/L).

The Staff Report identifies that at least two of the objectives proposed for chlorobenzene and endrin are more stringent than the values presented in the current Table 3-2. (*See Staff Report* at 6-3.³) Nevertheless, the Regional Board has done no analysis of these changes and how they will impact water quality regulation, how they will be achieved, or what regulated discharges may need to do to comply with these changes. Importantly, these MCLs have never been subjected to the Water Code requirements for adoption as separate water quality objectives under Water Code section 13241, and that must be done before they are incorporated into the Basin Plan.

The Regional Board must conduct its own independent analysis of the evidence relied on by other agencies before adopting another entity's criteria as its own. This obligation is critical since other entities are not required to consider the same statutorily mandated factors that the Regional Board must consider when adopting water quality objectives ("WQOs"). As stated above, the Regional Board has failed to conduct any independent analysis of the DPH MCLs (i.e., drinking water standards applicable to tap water) before proposing to adopt such standards as WQOs for rivers, streams, and other waterways throughout the North Coast. Thus, the Regional Board has failed to comply with applicable law in the proposed adoption of these "borrowed" standards. Porter-Cologne mandates the consideration and balancing of a number of factors, including economics and the reasonable attainability of WQOs in affected waters, which has not been done.

The Chief Counsel of the SWRCB has explained in detail the "affirmative duty" of the regional boards to apprise themselves of the cost and other potential consequences of any proposed WQO, and to engage in a "balancing" process in order to arrive at WQOs that are "reasonable":

A Regional Water Board is under an affirmative duty to consider economics when adopting water quality objectives in water quality control plans . . . To fulfill this duty, the Regional Water Board should assess the costs of the proposed adoption of a water quality objective.

If the potential economic impacts of the proposed adoption of a water quality objective appear to be significant, the Regional Water Board must articulate why adoption of the objective is necessary to assure the reasonable protection of beneficial uses of state waters, despite the potential adverse economic consequences.

* * * *

³ It should be noted that the tables of MCLs in Title 22 do not contain an MCL for chlorobenzene and neither does Table 3-2. There is an MCL for 1,4-Dichlorobenzene in both places and that has not changed. In addition, the MCLs for Arsenic and Cadmium have gotten more stringent, which was not identified in the Staff Report. (Compare Table 3-2 with Title 22, Table 64431-A.)

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... objectives must be reasonable and economic considerations are a necessary part of the determination of reasonableness. "The regional boards must balance environmental characteristics, past, present and future beneficial uses, and economic considerations (both the cost of providing treatment facilities and the economic value of development) in establishing plans to achieve the highest water quality which is reasonable." [citation omitted]

* * * *

The State or Regional Water Board's rationale for determining that adoption of a proposed objective is necessary to protect water quality, despite adverse economic consequences, must be discernible from the record. (SWRCB Chief Counsel Memorandum from William R. Attwater, to Regional Water Board Executive Officers, *Guidance on Consideration of Economics in the Adoption of Water Quality Objectives*, January 4, 1994.)

With respect to the WQOs at issue incorporated into the Chemical Constituents Objective, no evidence exists that the Regional Board has adequately complied with Water Code §13241 and §13242. In fact, without evidence, the Regional Board concludes that "there will be no additional costs incurred as a result of the adoption of the proposed WQO Update Amendment." (*See Staff Report* at 5-43.) The Regional Board simply proposes to incorporate the DPH MCLs, without any independent analysis of each of the factors required by Water Code §13241 for each of the proposed new MCLs being incorporated. The Regional Board did not make a reasonable attempt to determine the cost of compliance, balance public interest factors, or create an implementation plan for each MCL.

The Regional Board attempted to perform a 13241 analysis for all changes being made on pages 7-1 through 7-5 of the Staff Report, but that analysis is clearly inadequate. First, the analysis admits that "there is insufficient data to conclude if all groundwaters and surface waters are attaining the proposed objectives." (*See Staff Report* at 7-5.) Without this data, the Regional Board cannot adequately consider the "quality of water available" in the hydrographic units to which these objectives will apply, or the "water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area." (Cal. Water Code §13241(b) and (c).) The Regional Board also somehow concludes that "there will be no additional costs to dischargers or responsible parties to implement the proposed WQO Update Amendment" because the Regional Board erroneously assumes that "the proposed objectives will not change the way staff regulates discharges." (*See Staff Report* at 7-5.)

If new water quality objectives are adopted, dischargers will have to comply with those new objectives. A presumption that no new treatment technologies will be required to comply with these new objectives is not adequately supported by evidence in the record and does not comply with the Water Code. In addition, the Regional Board failed to create an implementation plan for any dischargers because of the inaccurate conclusions that "no additional actions would be necessary to achieve the new objectives as implementation of the existing chemical constituents

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objective and protection of drinking water supplies is already in place,” and “no additional actions beyond those already required as part of the current regulatory programs are needed to achieve compliance with the proposed water quality objectives.” (*See Staff Report* at 7-6.)

The Regional Board, if using MCLs from DPH, must also consider the Best Available Technologies (“BAT”) identified by that agency that have been stated would be necessary to treat drinking water to the MCL levels. These technologies include, but are not limited to, coagulation/filtration, granular activated carbon, ion exchange, reverse osmosis, electrodialysis, oxidation, and lime softening. (*See e.g.*, Title 22 at Tables 64447.2A, 64447.3A, B and C.) Since similar technologies would be needed for wastewater or stormwater to achieve these same MCL levels, the costs of these treatment technologies must be included in any proper 13241 analysis.

D. Removal of the Objectives Table 3-2

The new Chemical Constituents Objective proposes to incorporate by reference MCLs adopted by DPH. The Staff Report states that “[m]aintaining a table containing values consistent with CCR [California Code of Regulations] would require continual updating of the Basin Plan.” (*See Staff Report* at 3-12.) The table should be maintained so that people attempting to determine compliance with the Basin Plan objectives do not have to resort to other documents.⁴

E. Unlawful Incorporation by Reference of New MCLs in the Future

In an attempt to limit the work required in maintaining a table of applicable objectives, the proposed amendment seeks to incorporate the changes to the MCLs *automatically and prospectively*. (*Id.*) This type of prospective incorporation has been challenged numerous times and the validity of this practice is currently awaiting a decision by the Court of Appeals in the *City of Vacaville v. State Water Resources Control Board and California Regional Water Quality Control Board for the Central Valley* case (First Appellate District, Division 4, Case No. A127207). As the legality of this practice is currently uncertain, the Regional Board should refrain from adopting a similar approach that suffers from the following legal infirmities.

Further, performance of a proper section 13241 analysis and adoption of a section 13242 implementation plan for these newly and automatically incorporated MCLs would be impossible because these WQOs *prospectively* incorporate by reference currently-unknown standards of other entities.

In *California Assn. of Nursing Homes v. Williams* (1970) 4 Cal.App.3d 800 (“*Williams*”), a California court considered whether the Department of Health Care Service, in its regulations, could adopt standards developed by the Department of Finance for reimbursement rates for

⁴ In addition, maintenance of the table would avoid the following problems associated with prospective incorporation by reference.

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certain health care services, “without independent consideration of the underlying evidence and without public or judicial access to [that evidence].” (*Id.* at pp. 813-814.) The court held that to do so, “transgresses fundamental demands for the adoption of administrative regulations.” (*Id.* at p. 814.) Further, the court held that the statute “*enjoins the Director of Health Care Services, no one else, to adopt regulations* establishing these rates. In the enactment of these regulations *he, no one else*, is to receive and consider the evidence which will permit compliance with the statutory standard” (*Id.* at p. 815, emphasis added.)

A necessary and unavoidable corollary of this rule prohibiting incorporation by reference without independent analysis is that *prospective* incorporation by reference is never permissible. An agency cannot conduct an independent analysis of another agency’s regulations or actions *before* such third party’s regulation or action is even known. *Williams* did not involve prospective incorporation but, based on the underlying principles articulated, that court recognized that prospective incorporation by reference necessarily would have “dubious validity.” (*Williams, supra*, 4 Cal.App.3d at p. 814.) The deficiencies of such practice include: removal of the obliged agency and affected public from the relevant decision making process; effective avoidance by the agency of actually conducting a rulemaking proceeding; complete inability of the regulated public to know, let alone object to, the specific matter being incorporated; and improper delegation of authority and responsibility. (Bonfield, State Administrative Rule Making (1986) pp. 325-326.)

Here, the Regional Board is obliged to conduct the analysis required by Water Code section 13241. Water Code section 13223(a) reinforces this obligation. That provision allows the Regional Board to delegate any “powers and duties vested in it . . . to its executive officer *excepting only* the following: . . . (2) the issuance, modification, or revocation of any water quality control plan, *water quality objectives*, or waste discharge requirement” (Wat. Code, §13223(a), emphasis added.) By incorporating standards developed and approved by another entity as WQOs, without any independent analysis as required by Water Code §13241 and *Williams*, the Regional Board would be improperly delegating its responsibility for establishing WQOs. Water Code §13223(a) confirms that the Regional Board is *precluded* from adopting WQOs that incorporate by reference matters that are not the product of the Regional Board’s own *independent* rulemaking.

Establishing WQOs, present or future, is the exclusive province of the Regional Board. The Regional Board may make use of the expertise of other entities as *guidance* in determining appropriate WQOs, but it may not rely on others to perform its legal obligation to develop WQOs that are reasonable and to conduct the required analysis.

F. “At a Minimum” Standards

Many of the proposed new objectives begin with the words “[a]t a minimum.” This injects uncertainty into the regulatory scheme and makes it difficult to adequately perform a section 13241 analysis or implement a compliance plan, since it is unclear whether the objective being imposed is the one set forth in the Basin Plan or something more stringent as alluded to by the

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“at a minimum” language. Regulations need to be clear or they are subject to being voided for vagueness. For this reason, the words “at a minimum” must be removed from the proposed modified objectives (e.g., “Pesticides” objective, “Radioactivity” objective, and “Chemical Constituents” objective) since those objectives are presumably being set a level that will provide reasonable protection of the designated beneficial uses.

G. Application to Designated Uses

The Regional Board proposes modifying the language of several objectives to delete language referring to waters with a “designated” use and instead apply the objectives whether or not a use is designated. (*See Staff Report* at 3-7.) This proposal is vague, contradicts clear requirements in Water Code sections 13241 and 13263 that water quality objectives and discharge requirements be linked to protection of beneficial uses, and will lead to confusion as to when objectives apply. If the Regional Board believes that there are “designated” uses that do not reflect the actual “existing” uses, then the appropriate step is to modify the Basin Plan to add more waters as designated for that existing use, not to remove reference to designated uses.

In addition, the Regional Board should review some of its use designations that appear to be overbroad, such as the designation of Humboldt Bay as an existing MUN drinking water use. No evidence exists that there are any drinking water intakes from the Bay or that the Bay can attain the MCLs, including those for salinity. As such, this seems to be an erroneous “existing” use designation that may drive excessive and unnecessary regulation. Such designations are also subject to triennial review and must be revisited to ensure that they are accurate. (40 C.F.R. §131.20(a); Wat. Code §13240.)

H. Antidegradation Analysis

The Regional Board’s analysis suffers from a fundamental misunderstanding of the scope and application of the State’s anti-degradation policy (Res. 68-16). Anti-degradation analyses are necessary where the state proposes to take a specific action (e.g., permitting or licensing) in regards to an activity that may degrade existing high quality waters, and mandates that the existing high quality water be maintained unless the State determines some degradation is acceptable in the interests of the maximum benefit to the people of the State. That analysis has not been accurately performed and should be revised before this Basin Plan amendment proceeds to adoption.

Nonetheless, the proposed modifications to the section of the Basin Plan on Antidegradation Analysis should be clarified as follows:

1) Maintenance of the phrase “is better than” the water quality objectives is more accurate than the proposed word “exceeds” in relation to the water quality objectives since for some objectives (such as pH and DO, “exceeds” may not be an appropriate term). For this reason, the first proposed modification to Section 3.3.1 should not be made.

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2) The characterization of the intertwining of the state and federal antidegradation policies is incorrect. The state's Antidegradation Policy was adopted as a resolution in 1968, which *preceded* the Clean Water Act's adoption in 1972 and the subsequent regulations that incorporated antidegradation requirements. (40 C.F.R. §131.12.) Thus, the second to last sentence in the first paragraph of Section 3.3.1 should be modified to read:

The State Water Board has interpreted the state Antidegradation Policy to ~~incorporate~~ be consistent with the federal Antidegradation Policy where the federal policy applies.

3) Remove the paragraph stating that “[u]nder the federal Antidegradation Policy, an activity that results in a discharge would be prohibited if the discharge will lower the quality of surface waters that do not currently attain standards.” This is not an accurate characterization of the law and would ostensibly prohibit currently permitted discharges. In waters not meeting standards, existing instream water uses and the level of water quality necessary to protect the existing uses must be maintained. (40 C.F.R. §131.12(a)(1).) That is not the same as prohibiting discharges. Further, TMDLs that contain compliance schedules may authorize the continuing discharge to a water body described above, and the proposed amendment language would call into question this practice, which is sanctioned by federal law.

4) Remove the statement that antidegradation policies are “enforceable independent of this Basin Plan provision” as that statement is unsupported does not accurately reflect current law.

5) Finally, the last sentence stating that this is merely a summary provided for the convenience of the reader should be maintained, as that is all this section represents.

I. Narrative Objective Translator

Where, as here, a state regulatory agency utilizes narrative water quality standards instead of numeric standards, the state must provide information sufficient to apprise the public as to how their discharges will be regulated. This mandatory information is called a “translator” mechanism.

In establishing water quality criteria or objectives to protect designated uses, the States are not without guidance. Under CWA section 304(a), the United States Environmental Protection Agency (“EPA”) is required to publish new and revised “criteria documents” to help the States develop water quality criteria which reflect the latest scientific knowledge. (33 U.S.C. §1314(a)(1).) EPA regulations provide that States should develop numeric criteria based on the EPA’s criteria guidance under CWA section 304(a), EPA’s criteria guidance modified to reflect site specific conditions, or other scientifically defensible methods. (*See* 40 C.F.R. §131.11(b)(1); 48 Fed. Reg. 51,400, 51,411 (1983). These requirements ensure that the State engages in the analytical processes mandated by State law so that the criteria adopted by the States are tailored to each State’s own particular conditions and requirements.

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Where the EPA has published numeric criteria guidance for specific toxic pollutants under CWA section 304(a) [33 U.S.C. § 1314(a)], and it is determined that the specific pollutant can reasonably be expected to interfere with the states' designated uses of their waters, the states must adopt numeric water quality criteria for such toxic pollutants. (33 U.S.C. §1313(c)(2)(B).) It is not clear that the Regional Board has complied with this directive where it is still relying on the use of a narrative objective when criteria guidance exists. EPA section 304(a) criteria guidance exists for at least 126 priority pollutants. (See 40 C.F.R. §131.36(b)(1).) The Regional Board has only adopted a few numeric criteria for only a handful of these toxic pollutants. (AR 903-925.) In other words, the Regional Board has in the first instance impermissibly left the regulation of these pollutants in the hands of its narrative criteria.

Moreover, instead of proposing to incorporate the National and California Toxics Rule criteria into the Basin Plan, those criteria must be reviewed (since no such review has been done since 1992 or 2000, respectively, for these criteria) under the requirements of the Water Code to ensure that these criteria make sense site specifically. For example, the Bay Area Clean Water Agencies performed a site specific objective study on cyanide that determined that the crab species used to set the national EPA criteria for cyanide was only indigenous to the East Coast and not found on the West Coast. Adjustment of the criteria to correct for this site specific consideration modified the objective, making it much easier for dischargers to comply and negating the need for additional treatment. Therefore, in addition to adding a narrative translator, the Regional Board should adopt numeric criteria that have been demonstrated to be reasonable and achievable for local waterways.

In instances where numerical criteria are not available or cannot be ascertained from the EPA's guidance, states are allowed to establish narrative criteria sufficient to protect designated uses in the interim until numeric criteria are adopted. (*Id.*; 40 C.F.R. § 131.11(b)(2).) However, where a State adopts narrative, rather than numeric, criteria to protect designated uses, the State must also adopt a "translator" procedure that addresses all mechanisms to be used by the State to ensure that narrative criteria are attained. (AR 504, 507-14 (EPA Water Quality Standards Handbook, Second Edition).) The requirement of a translator procedure is not only intended to give the public and regulated community fair notice of what is expected of them, but also to ensure that the narrative criteria have clear bounds and a rational basis for their implementation. (See *id.*) Thus, "[t]he combination of a narrative standard . . . and an approved translator mechanism as part of a State's water quality standards satisfies the requirements of CWA section 303(c)(2)(B)." (57 Fed. Reg. 60848, 60853 (1992).)

The Regional Board is proposing such a translator, but it fails to comply with state law requirements. This translator must provide "information identifying the method by which the State intends to regulate point source discharges of toxic pollutants . . . based on such narrative criteria." (40 C.F.R. § 131.11(a)(2); see accord *Cities of Los Angeles, Burbank, Simi Valley and County Sanitation Districts of Los Angeles County v. U.S. EPA*, Case No. CV 00-8919, Order Granting Plaintiffs' Motion for Summary Judgment and Remanding Action to EPA (Dec. 18,

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2001 (overturning EPA's approval of narrative objectives without an appropriate translator mechanism) .)

In EPA's official guidance documents, EPA explains at length the process the State must go through to implement an adequate translator mechanism. Among other things, EPA provides that a State's translator procedure for narrative criteria should specifically describe:

- specific, scientifically defensible methods by which the state will implement its narrative toxics standard for all toxics;
- how these methods will be integrated into the State's toxics control program;
- methods the State will use to identify those pollutants to be regulated in a specific discharge;
- an incremental cancer risk for carcinogens;
- methods for identifying compliance thresholds in permits where calculated limits are below detection;
- methods for selecting appropriate hardness, pH, and temperature variables for criteria expressed as functions;
- methods or policies controlling the size and in-zone quality of mixing zones;
- design flows to be used in translating chemical-specific numeric criteria for aquatic life and human health into permit limits; and
- other methods and information needed to apply standards on a case-by-case basis.

(See EPA Water Quality Standards Handbook, 2nd Ed.) EPA further stated that the State's translator procedure "be submitted to EPA for review and approval." Thus, by its own policies, EPA must review the scientific merit of the State's translator mechanism where a narrative standard is used to regulate toxic pollutants, and must verify the requirement that such translator be applied whenever toxic pollutants may reasonably be expected to exist or be discharged. (See also 57 Fed. Reg. 60853, 60855 (1992).)

Although the Regional Board is attempting to adopt a translator mechanism, there are several concerns with the policy as drafted. First, it is unclear how the documents listed as being "relevant site specific information" are actually site specific. For example, the list includes "numeric criteria and guidelines developed and published by other governmental and non-governmental agencies and organizations [footnote listing state, national and international entities], direct evidence of impacts to waters of the state, all material and relevant information submitted by the discharger and interested parties, peer-reviewed scientific literature." Besides the information submitted by the discharger, none of the other information appears to be

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particularly site specific. Further, there is no indication how the relevant information will be weighed – it appears the Regional Board has full discretion to pick any number it can find.

The *Compilation of Water Quality Goals* is no more site specific as that is merely another form of literature review and location of any criteria from anywhere that might possibly be utilized. These general lists of potential criteria are too vague to allow regulated entities to be aware of what the potential requirements placed upon them might be.

To remedy this, we have the following suggested changes:

Amend Step 1 to identify the beneficial uses should include a determination as to whether a designated use is actually an existing use or merely an historic or probable future use.

Amend Step 3 as follows: “Consider all appropriate sources of possible applicable numeric limits relevant to the site specific location of the discharge from established sources of numeric water quality criteria and standards developed and published by governmental and non-governmental agencies and organizations and other information supplied by the Regional Water Board, the permittee, and interested parties.”

Amend Step 5 as follows: “For each constituent or parameter of concern, select the most appropriate numeric limit or range of limits that would reasonably protect all applicable existing beneficial uses.

Amend Step 6 as follows: “Comply with the requirements of Water Code section 13263, including the analysis required under section 13241, and consider all applicable policies and regulations that ~~which~~ require further modification to the selected range of limits or levels.”

For the final paragraph, the Regional Board should consider adding that if there is reasonable potential for toxicity, then a narrative toxicity effluent limitation may be included, although these are not necessary where chemical specific limits are expected to attain standards. This would be consistent with federal regulations at 40 C.F.R. §122.44(d)(1)(v). Each of these steps should be laid out clearly in the fact sheet for any proposed regulatory permit or waiver so that the regulated community is fully aware of how the limits were being derived from narrative objectives.

We believe that these changes will represent a more rigorous and consistent approach to determining what limits are appropriate for interpreting a narrative water quality objective.

We thank you for your consideration of these comments.

Sincerely,



RANDAL J. MENDOSA

City Manager
City of Arcata

cc: Mark Andre, Director, Environmental Services Dept.
Karen Diemer, Deputy Director, Environmental Services Dept.